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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,974	12/21/2001	Charles R. Wescott	DYX-024.1 US	2108
26161	7590	10/14/2004	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			WAX, ROBERT A	
		ART UNIT	PAPER NUMBER	
		1653		

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/034,974	WESCOTT ET AL.	
	Examiner	Art Unit	
	Robert A. Wax	1653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 August 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4,6-10 and 12-35 is/are pending in the application.
- 4a) Of the above claim(s) 12-19,25,26 and 32-35 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,3,8,9,20-24 and 27-31 is/are rejected.
- 7) Claim(s) 4,6,7 and 10 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>09252003</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed September 23, 2003 has been considered. Please see the attached initialed PTO-1449.

Introduction

2. In response to the Ex parte Quayle action mailed June 30, 2004, applicants responded that they were under the impression that the restriction required between sequences was actually an election of species and that the previous election had been made under that premise. Applicants argue that the restriction seemed to be an election of species because of the language, "if no generic claim is finally held to be allowable." Examiner's original intent was to do a secondary restriction, not an election of species. However, Examiner concedes that the language used did imply that an election of species was being required. Hence, prosecution is reopened and the secondary restriction is hereby withdrawn. In view of the minor nature of the rejections of the product claims, applicants are advised that the method claims will be subject to rejoinder when the claims are amended to overcome the rejections presented below. Applicants may wish to amend the withdrawn process claims in response to this Office action to prevent problems arising after rejoinder. One such amendment would be to

correct the dependency to no longer depend from two canceled claims. Another such amendment would be to spell out the acronyms in claim 21.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 2, 3, 8, 9, 20-24 and 27-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, in the definition of X_5 , contains Glu twice. Claims 2, 9, 20-24 and 27-31 are included because they depend from claim 1 and do not cure the defect. Claims 3, 4, 6, 7, 8 and 10 are not included because they do cure the defect.

Claim 9 does not further limit claim 8 because the specification of residues X_5 , X_7 , X_{11} and X_{13} are the same in both claims. Claims 20-24 and 27-31 are included because they depend from claim 9 and do not cure the defect.

Claims 3, 8, 9, 20-24 and 27-31 are indefinite due to the presence of the phrase, "or combinations of such selections" because the meaning of that phrase is unclear. Claims 20-24 and 27-31 are included because they depend from claims 3, 8 and 9 and do not cure the defect.

Allowable Subject Matter

5. Claims 4, 6, 7 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

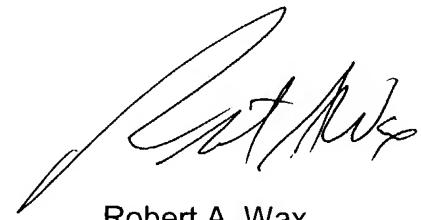
6. Claims 1-4, 6-10, 20-24 and 27-31 are allowable over the prior art of record.

Examiner has done his best to perform the best search possible and, although many references were discovered, none of them teach peptides that fall completely within the definitions provided in the claims.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Wax whose telephone number is (571) 272-0623. The examiner can normally be reached on Monday through Friday, between 9:00 AM and 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon P. Weber can be reached on (571) 272-0925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert A. Wax
Primary Examiner
Art Unit 1653

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